IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.570 OF 2005

Mrs. Vasudha Deepak Mankar	...	Petitioner
Vs.		
Shridhar Vishnu Athawale (HUF)	...	Respondent

Mr. Dhananjay Patil with Ms. Ruchika Nayyar for the petitioner.

Mr. P.S. Dani for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 14TH MARCH, 2005.

P.C.:-

1. In this writ petition, there is a challenge to the order dated 14/12/2004 passed by the Additional District Judge, Pune, whereby the revision application filed by the plaintiff was allowed and the petitioner/defendant-tenant is directed to deposit the amount of arrears of rent upto the date of the said order i.e. 14/12/2004, within 30 days and continue to deposit the amount of monthly rent in the trial court pending the suit. It is further ordered that in the event of any default in making the deposits as aforesaid, the trial court may subject to the provisions of sub-rule (2) of Order XV-A of the Code of Civil Procedure, strike off the defence.

2. I have heard the learned counsel for the parties.

3. The learned counsel for the petitioner-defendant submitted that the plaintiff has put up a wall and thereby made it impossible for the defendant to use the open space of which the defendant claims to be a tenant. He submitted that it is impossible for the defendant to use the suit premises and, therefore, the order directing him to deposit the amount of arrears of rent is illegal and unjust. In support of his case, he produced certain photographs in the court.

4. Mr. Dani, the learned counsel for the respondent/plaintiff disputes the fact that the defendant is a tenant in respect of the open space. At this stage, I do not want to go into the merits of the case. That will be decided by the trial court at the final hearing of the suit. But, in the facts and circumstances of the case, I find that the revisional court's order directing the defendant to deposit the arrears of rent passed under Order XV-A of the Civil Procedure Code cannot be set aside. However, in the peculiar facts and circumstances of the case and on the concession made by Mr. Dani on instructions from his client the plaintiff, who is present in the court, that the plaintiff will not withdraw the deposited amounts, the plaintiff will have to be directed not to withdraw the amounts deposited by the defendant. Hence, the following order.

5. The petitioner/defendant shall, in compliance of the order dated 14/12/2004, deposit the arrears of rent and

continue to pay the rent in the trial court. However, the plaintiff will not be allowed to withdraw the same. The trial court is directed to invest the deposited amount in a national bank on usual terms. Needless to state that if the defendant complies with the above direction, his defence cannot be struck off. The learned counsel for the defendant states that the amount would be deposited within a period of 30 days from today.

6. With this direction, the petition is disposed of.

(SMT. RANJANA DESAI, J.)